



**DEPARTMENT OF THE NAVY**  
BOARD FOR CORRECTION OF NAVAL RECORDS  
701 S. COURTHOUSE ROAD, SUITE 1001  
ARLINGTON, VA 22204-2490

█  
Docket No. 9409-22  
Ref: Signature Date

█  
█  
█

Dear █

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. After careful and conscientious consideration of relevant portions of your naval record and your application, the Board for Correction of Naval Records (Board) found the evidence submitted insufficient to establish the existence of probable material error or injustice. Consequently, your application has been denied.

Although you did not file your application in a timely manner, the Board waived the statute of limitation in accordance with the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (Kurta Memo). A three-member panel of the Board, sitting in executive session, considered your application on 8 May 2023. The names and votes of the panel members will be furnished upon request. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of the Board. Documentary material considered by the Board consisted of your application together with all material submitted in support thereof, relevant portions of your naval record, and applicable statutes, regulations, and policies, to include the Kurta Memo, the 3 September 2014 guidance from the Secretary of Defense regarding discharge upgrade requests by Veterans claiming post-traumatic stress disorder (PTSD) (Hagel Memo), and the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice, or clemency determinations (Wilkie Memo). As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an Advisory Opinion (AO) on 23 March 2023. Although you were provided with an opportunity to submit a rebuttal to the AO, you chose not to do so.

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

During your enlistment processing you answered "no" to having been arrested. You enlisted in the Navy and began a period of active duty on 16 February 1995. On 25 June 1995, an FBI (Federal Bureau of Investigation) agency background check revealed you were arrested on 7

December 1989 for carrying a concealed weapon/pistol, on 10 August 1992 for assault, 12 October 1992 for simple assault.

On 15 December 1995, you were seen at Executive Officer's Inquiry (XOI) as a result of your unauthorized absence (UA). You were counseled that further misconduct may result in disciplinary action and administrative separation.

On 1 March 1996, you received your first nonjudicial punishment (NJP) for four (4) specifications of failure to go to your appointed place of duty and for dereliction of duty. Five days later, on 6 March 1996, you received a second NJP for two (2) specifications of failure to obey a lawful order by not being in the proper uniform and for being late for restricted muster.

As a result, on 25 March 1996, you were notified of your pending administrative discharge by reason of minor disciplinary infractions, commission of a serious offense (COSO) and defective enlistment and induction due to fraudulent entry, at which time you waived your right to consult with military counsel and to have your case heard before an administrative discharge board. On 3 April 1996, your Commanding Officer (CO) recommended to the separation authority that you be discharged with an Other Than Honorable (OTH) characterization of service. On 26 April 1996, the separation authority directed you be discharged with an OTH by reason of commission of a serious offense. On 10 May 1996 you were so discharged.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Kurta, Hagel, and Wilkie Memos. These included, but were not limited to, your desire to upgrade your discharge, to remove "fraudulent entry" verbiage from your (OMPF), and your contentions that: (1) you incurred PTSD during while employed on the flight line, (2) there was favoritism and disrespect occurring and when you tried getting away with little things others got away with, such as taking a cigarette break, it worsened for you and you were counseled, (3) you experienced two nearly fatal accidents, (4) after a traumatic event you attempted to receive help but were punished instead, and (5) specific to your fraudulent entry, you informed your recruiter of "everything and answered all questions and paperwork truthfully". For purposes of clemency and equity consideration, the Board noted you did not provide documentation describing post-service accomplishments or advocacy letters.

Based on your assertions that you incurred PTSD during military service, which might have mitigated the circumstances of your discharge, a qualified mental health professional reviewed your request for correction to your record and provided the Board with an AO. The AO stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. He has provided no medical evidence in support of his claims. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct, particularly given his pre-service undisclosed misconduct. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) may aid in rendering an alternate opinion.

The AO conclude, “it is my clinical opinion there is insufficient evidence of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD.”

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJPs and fraudulent entry, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. Additionally, the Board concurred with the AO that there is insufficient evidence of a diagnosis of PTSD that may be attributed to your military service or misconduct. Moreover, the Board determined the record clearly reflected that your active duty misconduct was intentional and willful, and demonstrated you were unfit for further service. Finally, the Board noted you provided no evidence to substantiate your contentions. As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH characterization. Even in light of the Wilkie Memo and reviewing the record liberally and holistically, the Board did not find evidence of an error or injustice that warrants granting you the relief you requested or granting relief as a matter of clemency or equity. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

You are entitled to have the Board reconsider its decision upon the submission of new matters, which will require you to complete and submit a new DD Form 149. New matters are those not previously presented to or considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity is attached to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

5/17/2023

█  
█

Deputy Director

Signed by: █